

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ATIBA MOORE,

Petitioner,

vs.

GREG SMITH, *et al.*,

Respondents.

3:10-cv-00194-ECR-RAM

ORDER

Atiba Moore, a prisoner at Nevada State Prison, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Following a decision on respondents' motion to dismiss, petitioner moves to amend his petition (ECF No. 21) submitting the proposed amendment. Respondents have responded to the motion stating they have no objection to the amendment provided that petitioner recognizes that the amended petition supersedes his prior petition, *F.D.I.C. v. Jackson*, 133 F.3d 694, 702 (9th Cir. 1998), and that respondents may raise any defense that they might have to the amendment including an argument related to the timeliness of the amended claims (ECF No. 22). Petitioner has not filed a reply, suggesting his acquiescence to these conditions. LRP 7-2(d).


Having reviewed the petition, which repeats the claim raised in ground 3 of the original petition, identifying it as ground 1, and includes a second claim which petitioner asserts was taken from his fast track statement on appeal from the new sentencing hearing, the motion to amend

1 shall be granted. Respondents shall file their answer and other response to the amended petition
2 within forty-five days of entry of this order.

3 **IT IS THEREFORE ORDERED** that the Motion to Amend (ECF No. 21) is
4 **GRANTED.** The Clerk shall detach and file the proposed amended petition.

5 **IT IS FURTHER ORDERED** that respondents shall file their answer, including any
6 and all defenses, within forty-five days of entry of this order. Petitioner shall have thirty days
7 thereafter to file his response and, if appropriate, respondents shall have twenty days to reply.

8
9 Dated this __ 1st __ day of March, 2011.

10 
11 UNITED STATES DISTRICT JUDGE